

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2285 - SB 2289**

March 6, 2016

**SUMMARY OF BILL:** Creates a Class E felony for an inmate to engage in sexual contact or sexual penetration with a law enforcement officer, correctional employee, a member of the medical staff, vendor, or volunteer.

Creates a new offense for an inmate committing a sexual offense against a law enforcement officer, correctional employee, a member of the medical staff, vendor, or volunteer acting in the discharge of the person's duty. Defines "sexual offense" for purposes of the offense. The offense shall be punished one classification higher than the underlying offense.

Requires the Department of Correction (DOC) to report to the chairs of the State and Local Government Committee of the Senate, the State Government Committee of the House of Representatives, the Local Government Committee of the House of Representatives, the Judiciary Committee of the Senate, the Criminal Justice Committee of the House of Representatives, and the Speakers of the Senate and the House of Representatives, and the Comptroller of the Treasury, by the 13th day of each month, the number of sexual offenses that occurred in each correctional facility during the preceding month, and the training plans implemented during the preceding month for any staff involved in a sexual offense and a description of the training plans that will be offered during the following month to decrease the number of sexual offenses at the penal institution.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$64,700/Incarceration\***

Assumptions:

- Tennessee Code Annotated § 39-16-408 prohibits a law enforcement officer, correctional employee, vendor, or volunteer from engaging in sexual contact with an inmate.
- The bill creates a similar offense for an inmate to engage in sexual contact with a law enforcement officer, correctional employee, a member of the medical staff, vendor, or volunteer.
- Statistics from the DOC show a 10-year average of 0.2 admissions per year for sexual contact with an inmate. It is assumed that the bill will result in one Class E felony

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admission for sexual contact with a law enforcement officer, correctional employee, a member of the medical staff, vendor, or volunteer every five years.

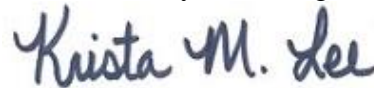
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- The average time served for a Class E felony is 1.47 years.
- A recidivism discount of 43.7 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- According to the DOC, the average operating cost per offender per day for calendar year 2016 is \$67.73.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving an additional 1.47 years (536.92 days) for an annualized total of \$7,273.12  $[(\$67.73 \times 536.92 \text{ days}) / 5]$ .
- The bill creates a new offense for an inmate committing a sexual offense against a law enforcement officer, correctional employee, a member of the medical staff, vendor, or volunteer. The offenses that constitute a “sexual offense” under the new offense include aggravated rape, rape, aggravated sexual battery, and sexual battery.
- The new offense shall be punished one classification higher than the underlying offense.
- It is assumed that two inmates every five years will be convicted of the new offense: one for aggravated sexual battery and one for sexual battery.
- Aggravated sexual battery is a Class B felony. The bill will result in one inmate every five years being convicted of a Class A felony rather than a Class B felony. The average time served for a Class A felony is 17.35 years, and 6.59 years is the average time served for a Class B felony. The bill will result in one admission every five years serving an additional 10.76 years  $(17.35 - 6.59)$ .
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount of 49.2 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving an additional 10.76 years (3,930.09 days) for an annualized total of \$53,237.00  $[(\$67.73 \times 3,930.09 \text{ days}) / 5]$ .
- Sexual battery is a Class E felony. The bill will result in one inmate every five years being convicted of a Class D felony rather than a Class E felony. The average time served for a Class D felony is 2.32 years, and 1.47 years is the average time served for a Class E felony. The bill will result in one admission every five years serving an additional 0.85 years  $(2.32 - 1.47)$ .
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.

- A recidivism discount of 33.3 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving an additional 0.85 years (310.46 days) for an annualized total of \$4,205.49 [(\$67.73 x 310.46 days) / 5].
- The bill will increase state incarceration costs by an estimated \$64,715.61 (\$7,273.12 + \$53,237.00 + \$4,205.49).
- The bill will only create three new felony cases every five years. It is assumed that the courts, district attorneys, and public defenders can accommodate the impact of the bill within existing resources.
- The Administrative Office of the Courts and the District Attorneys General Conference confirm that any impact from the bill can be accommodated within their existing resources.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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